

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 375

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR STEELMAN.

Offered April 25, 2001.

Senate Substitute adopted, April 25, 2001.

Taken up for Perfection April 25, 2001. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

1409S.06P

AN ACT

To repeal sections 58.451, 58.740, 188.015, 188.052, 188.055, 188.070, 610.010, 610.015, 610.021, 610.022, 610.026, 610.027, 610.100, 610.105 and 610.200, RSMo 2000, relating to public records, and to enact in lieu thereof seventeen new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 58.451, 58.740, 188.015, 188.052, 188.055, 188.070, 610.010, 610.015, 610.021, 610.022, 610.026, 610.027, 610.100, 610.105 and 610.200, RSMo 2000, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 58.451, 58.740, 188.015, 188.052, 188.055, 188.070, 191.655, 197.735, 610.010, 610.015, 610.021, 610.022, 610.026, 610.027, 610.100, 610.105 and 610.200, to read as follows:

58.451. 1. When any person, in any county in which a coroner is required by section 58.010, dies and there is reasonable ground to believe that such person died as a result of:

- (1) Violence by homicide, suicide, or accident;
- (2) Criminal abortions, including those self-induced;
- (3) Some unforeseen sudden occurrence and the deceased had not been attended by a physician during the thirty-six-hour period preceding the death;
- (4) In any unusual or suspicious manner;
- (5) Any injury or illness while in the custody of the law or while an inmate in a public institution; the police, sheriff, law enforcement officer or official, or any person having knowledge of such a death shall immediately notify the coroner of the known facts concerning the time, place,

manner and circumstances of the death. Immediately upon receipt of notification, the coroner or his deputy shall take charge of the dead body and fully investigate the essential facts concerning the medical causes of death, including whether by the act of man, and the manner of death. He may take the names and addresses of witnesses to the death and shall file this information in his office. The coroner or his deputy shall take possession of all property of value found on the body, making exact inventory of such property on his report and shall direct the return of such property to the person entitled to its custody or possession. The coroner or his deputy shall take possession of any object or article which, in his opinion, may be useful in establishing the cause of death, and deliver it to the prosecuting attorney of the county.

2. When a death occurs outside a licensed health care facility, the first licensed medical professional or law enforcement official learning of such death shall contact the county coroner. Immediately upon receipt of such notification, the coroner or the coroner's deputy shall make the determination if further investigation is necessary, based on information provided by the individual contacting the coroner, and immediately advise such individual of the coroner's intentions.

3. Upon taking charge of the dead body and before moving the body the coroner shall notify the police department of any city in which the dead body is found, or if the dead body is found in the unincorporated area of a county governed by the provisions of sections 58.451 to 58.457, the coroner shall notify the county sheriff and the highway patrol and cause the body to remain unmoved until the police department, sheriff or the highway patrol has inspected the body and the surrounding circumstances and carefully noted the appearance, the condition and position of the body and recorded every fact and circumstance tending to show the cause and manner of death, with the names and addresses of all known witnesses, and shall subscribe the same and make such record a part of his report.

4. In any case of sudden, violent or suspicious death after which the body was buried without any investigation or autopsy, the coroner, upon being advised of such facts, may at his own discretion request that the prosecuting attorney apply for a court order requiring the body to be exhumed.

5. The coroner shall certify the cause of death in any case under his charge when a physician is unavailable to sign a certificate of death.

6. When the cause of death is established by the coroner, he shall file a copy of his findings in his office within thirty days.

7. When a coroner investigates a death, the office of the coroner shall, within seventy-two hours of occurrence or discovery of the death, make the following information, to the extent it is known, available as an incident report for public inspection and copying:

(1) The name, age, address, sex and race of the deceased;

(2) The address or location where the body was found and, if different, the address or location where the death occurred;

(3) The name of the agency to which the death was reported;

(4) The name of the responsible public official notifying the coroner of the death, and the name of the person in charge of the investigation;

(5) The entity taking custody of the body;

(6) Information regarding any autopsy limited to the date, the person who performed the autopsy, where the autopsy was performed and a conclusion as to the reason for death, such limited autopsy information to be available within seventy-two hours of the completion of the autopsy.

[7.] **8.** If on view of the dead body and after personal inquiry into the cause and manner of death, the coroner determines that a further examination is necessary in the public interest, the coroner on his own authority may make or cause to be made an autopsy on the body. The coroner may on his own authority employ the services of a pathologist, chemist, or other expert to aid in the examination of the body or of substances supposed to have caused or contributed to death, and if the pathologist, chemist, or other expert is not already employed by the city or county for the discharge of such services, he shall, upon written authorization of the coroner, be allowed reasonable compensation, payable by the city or county, in the manner provided in section 58.530. The coroner shall, at the time of the autopsy, record or cause to be recorded each fact and circumstance tending to show the condition of the body and the cause and manner of death.

[8.] **9.** If on view of the dead body and after personal inquiry into the cause and manner of death, the coroner considers a further inquiry and examination necessary in the public interest, he shall make out his warrant directed to the sheriff of the city or county requiring him forthwith to summon six good and lawful citizens of the county to appear before the coroner, at the time and place expressed in the warrant, and to inquire how and by whom the deceased came to his death.

[9.] **10.** When a person is being transferred from one county to another county for medical treatment and such person dies while being transferred, the county from which the person is first removed shall be considered the place of death and the county coroner of the county from which the person was being transferred shall be responsible for the certificate of death and for investigating the cause and manner of the death. If the coroner or medical examiner in the county in which the person died believes that further investigation is warranted and a postmortem examination is needed, such coroner or medical examiner shall have the right to further investigate and perform the postmortem examination at the expense of such coroner or medical examiner and shall be responsible for the certificate of death and for investigating the cause and manner of the death. Such coroner or medical examiner shall immediately notify the coroner or medical examiner of the county from which the person was being transferred of the death of such person and after an investigation is completed shall notify such coroner or medical examiner of his findings. If a

person does not die while being transferred and is institutionalized after such transfer and subsequently dies while in such institution, the coroner or medical examiner of the county in which the person dies shall immediately notify the coroner or medical examiner of the county from which such person was transferred of the death of such person. In such cases, the county in which the deceased was institutionalized shall be considered the place of death.

[10.] **11.** Except as provided in subsection 9 of this section, if a person dies in one county and his body is subsequently transferred to another county, the county coroner or medical examiner where the death occurred shall be responsible for the certificate of death and for investigating the cause and manner of the death.

[11.] **12.** In performing his duties, the coroner or medical examiner shall make reasonable efforts to accommodate organ donation.

58.740. **1.** The medical examiner shall keep full and complete records in his office, properly indexed, giving the name, if known, of each deceased person investigated under sections 58.010, 58.020, 58.060, 58.090, 58.160, 58.375, 58.451, 58.455 and 58.700 to 58.765 the place where the body was found, date and cause of death, and all other available information. The original report of the medical examiner or pathologist and the detailed findings of the autopsy, if any, shall be attached to the record of each case. The medical examiner shall promptly deliver to the prosecuting attorney of the county copies of all records relating to every death in which, in the judgment of such medical examiner, further investigation may be deemed advisable. The prosecuting attorney of the county may obtain from the office of the medical examiner copies of these records or other information which he may deem necessary.

2. When a medical examiner investigates a death, the office of the medical examiner shall, within seventy-two hours of occurrence or discovery of the death, make the following information, to the extent it is known, available for public inspection and copying:

- (1) The name, age, address, sex and race of the deceased;**
- (2) The address or location where the body was found and, if different, the address or location where the death occurred;**
- (3) The name of the agency to which the death was reported;**
- (4) The name of the responsible public official notifying the medical examiner of the death, and the name of the person in charge of the investigation;**
- (5) The entity taking custody of the body;**
- (6) Information regarding any autopsy limited to the date, the person who performed the autopsy, where the autopsy was performed and a conclusion as to the reason for death, such limited autopsy information to be available within seventy-two hours of the completion of the autopsy.**

188.015. [Unless the language or context clearly indicates a different meaning is intended,

the following words or phrases for the purposes of sections 188.010 to 188.130 shall be given the meaning ascribed to them] **As used in this chapter, the following terms mean:**

(1) "Abortion", the intentional destruction of the life of an embryo or fetus in his or her mother's womb or the intentional termination of the pregnancy of a mother with an intention other than to increase the probability of a live birth or to remove a dead or dying unborn child;

(2) "Abortion facility", a clinic, physician's office, or any other place or facility in which abortions are performed other than a hospital;

(3) "Conception", the fertilization of the ovum of a female by a sperm of a male;

(4) "Department", the department of health;

[(4)] **(5)** "Gestational age", length of pregnancy as measured from the first day of the woman's last menstrual period;

[(5)] **(6)** "Physician", any person licensed to practice medicine in this state by the state board of registration of the healing arts;

[(6)] **(7)** "Unborn child", the offspring of human beings from the moment of conception until birth and at every stage of its biological development, including the human conceptus, zygote, morula, blastocyst, embryo, and fetus;

[(7)] **(8)** "Viability", that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems.

188.052. 1. An individual abortion report for each abortion performed or induced upon a woman shall be completed by her attending physician. **The report shall include:**

(1) Information required by the United States Standard Report of Induced Termination of Pregnancy, published by the National Center for Health Statistics, Centers for Disease Control and Prevention, United States Department of Health and Human Services, or its successor publication or agency;

(2) Additional information on the type of abortion procedure used, including the specific surgical or nonsurgical method or the specific abortion-inducing drug or drugs employed, including, but not limited to: vacuum aspiration, suction curettage, sharp curettage, dilation and evacuation or "D&E", intact D&E, dilation and extraction or "D&X", intrauterine saline instillation, intrauterine prostaglandin instillation, hysterotomy, methotrexate, mifepristone or misoprostol; and

(3) The reason or reasons the woman sought the abortion, including specific medical, social, economic or other factors, including, but not limited to: particular maternal health conditions, pregnancy resulting from rape or incest, does not want others to know of her pregnancy, others object to her pregnancy, has relationship problems with the father of the child or other family members, lack of financial support from the father of the child, disruption of education or job or desire to limit family size.

2. An individual complication report for any post-abortion care performed upon a woman

shall be completed by the physician providing such post-abortion care. This report shall include, **but not be limited to:**

(1) The date of the abortion;

(2) The name and address of the abortion facility or hospital where the abortion was performed;

(3) The nature of the abortion complication diagnosed or treated.

3. All abortion reports shall be signed by the attending physician, and submitted to the [state] department [of health] within forty-five days from the date of the abortion. All complication reports shall be signed by the physician providing the post-abortion care and submitted to the department [of health] within forty-five days from the date of the post-abortion care.

4. A copy of the abortion report shall be made a part of the medical record of the patient of the facility or hospital in which the abortion was performed.

5. The [state] department [of health] shall be responsible for collecting all abortion reports and complication reports and collating and evaluating all data gathered therefrom and shall annually publish a statistical report based on such data from abortions performed **or induced and post-abortion care provided** in the previous calendar year. **The report shall specify the gestational age, by weekly increments, at which abortions were performed or induced. The report shall not include any information that would allow the public to identify a specific:**

(1) Patient who obtained an abortion or who received post-abortion care;

(2) Physician who performed or induced an abortion or who provided post-abortion care; or

(3) Hospital or abortion facility where the abortion was performed or induced or which provided post-abortion care.

188.055. 1. Every abortion facility, hospital, and physician shall be supplied with forms by the department [of health] for use in regards to the consents and reports required by sections 188.010 to 188.085. A purpose and function of such consents and reports shall be the preservation of maternal health and life by adding to the sum of medical knowledge through the compilation of relevant maternal health and life data and to monitor all abortions performed to assure that they are done only under and in accordance with the provisions of the law.

2. All information obtained by physician, hospital, or abortion facility from a patient for the purpose of preparing reports to the department [of health under] **pursuant to** sections 188.010 to 188.085 or reports received by the [division of health] **department** shall be confidential and shall be used only for statistical purposes. Such records, however, may be inspected and health data acquired by local, state, or national public health officers.

188.070. Any [physician or other] person who [fails to maintain] **knowingly violates** the confidentiality of any records [or], reports [required under] **or documents maintained by the**

abortion facility or hospital or received by the department pursuant to sections 188.010 to 188.085 is guilty of a [misdemeanor and, upon conviction, shall be punished as provided by law] class D felony.

191.655. 1. Any individual aggrieved by a violation of a state statute relating to the confidentiality of medical records may, if a civil remedy is not otherwise provided for in the statute, bring a civil action for damages. If it is found in a civil action that:

(1) A person has negligently violated the statute, the person is liable, for each violation, for:

(a) The greater of actual damages or liquidated damages of one thousand dollars; and

(b) Court costs and reasonable attorney's fees incurred by the person bringing the action; and

(c) Such other relief, including injunctive relief, as the court may deem appropriate; or

(2) A person has willfully or intentionally or recklessly violated the statute, the person is liable, for each violation, for:

(a) The greater of actual damages or liquidated damages of five thousand dollars; and

(b) Exemplary damages; and

(c) Court costs and reasonable attorney's fees incurred by the person bringing the action; and

(d) Such other relief, including injunctive relief, as the court may deem appropriate.

2. The remedies available in this section are cumulative and in addition to any other criminal or administrative penalties otherwise provided for by law.

197.735. 1. As used in this section, the following terms mean:

(1) "Health carrier", the same as such term is defined in section 376.1350, RSMo;

(2) "Payment methodologies", how the units of service to be used as a basis for making payments are defined and the method of determining the specific payment amount per unit of service;

(3) "Public hospital", a hospital organized pursuant to section 81.180, RSMo, section 82.240, RSMo, sections 96.150 to 96.228, RSMo, sections 205.160 to 205.379, RSMo, or sections 206.010 to 206.160, RSMo;

(4) "Public record", the same as such term is defined in section 610.010, RSMo;

(5) "Related organization", an entity created by or affiliated with a public hospital, regardless of the degree of common control or governance with such hospital;

(6) "Self-insured health plan", an employee health benefit plan established by an

employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974.

2. Notwithstanding the provisions of chapter 610, RSMo, to the contrary, the governing body of a public hospital or a related organization of such hospital, or both, may close portions of records and meetings of the entity that it manages or controls if such portions of records and meetings pertain to:

(1) The payment amounts and payment methodologies of its contract proposals to and its contract with a health carrier or a self-insured health plan. Information concerning the parties involved and the duration of such a contract shall be a public record;

(2) Discussion and analysis of:

(a) Developing a new health service or new facility;

(b) Expanding or revising an existing health service or facility; or

(c) Entering into a shared service arrangement or other affiliation agreement;

(3) The amount of compensation that will be or is being paid to a physician under the public hospital's or a related organization's contract proposals to and contracts with the physician shall be available upon termination of contracts to the public;

(4) The records closed pursuant to this subsection shall be disclosed pursuant to lawful subpoena.

3. The disclosure of records and meetings of a public hospital, other than those records and meetings which may be closed pursuant to this section, shall be governed by chapter 610, RSMo. This section shall not be construed to prohibit a public hospital from claiming the benefit of any other exemption to chapter 610, RSMo, pursuant to section 610.021, RSMo.

610.010. As used in sections 610.010 to 610.030 and sections 610.100 to 610.150, unless the context otherwise indicates, the following terms mean:

(1) "Closed meeting", "closed record", or "closed vote", any meeting, record or vote closed to the public;

(2) "Copying", if requested by a member of the public, copies provided as detailed in section 610.026, if duplication equipment is available;

(3) "Public business", all matters which relate in any way to the performance of the public governmental body's functions or the conduct of its business;

(4) "Public governmental body", any legislative, administrative or governmental entity created by the constitution or statutes of this state, by order or ordinance of any political subdivision or district, judicial entities when operating in an administrative capacity, or by executive order, including:

(a) Any body, agency, board, bureau, council, commission, committee, board of regents or

board of curators or any other governing body of any institution of higher education, including a community college, which is supported in whole or in part from state funds, **specifically including the administrative entity known as "The Curators of the University of Missouri" as established by section 172.020, RSMo;**

(b) Any advisory committee or commission appointed by the governor by executive order;

(c) Any department or division of the state, of any political subdivision of the state, of any county or of any municipal government, school district or special purpose district including but not limited to sewer districts, water districts, and other subdistricts of any political subdivision;

(d) Any other legislative or administrative governmental deliberative body under the direction of three or more elected or appointed members having rulemaking or quasi-judicial power;

(e) Any committee appointed by or at the direction of any of the entities and which is authorized to report to any of the above-named entities, any advisory committee appointed by or at the direction of any of the named entities for the specific purpose of recommending, directly to the public governmental body's governing board or its chief administrative officer, policy or policy revisions or expenditures of public funds including, but not limited to, entities created to advise bi-state taxing districts regarding the expenditure of public funds, or any policy advisory body, policy advisory committee or policy advisory group appointed by a president, chancellor or chief executive officer of any college or university system or individual institution at the direction of the governing body of such institution which is supported in whole or in part with state funds for the specific purpose of recommending directly to the public governmental body's governing board or the president, chancellor or chief executive officer policy, policy revisions or expenditures of public funds provided, however, the staff of the college or university president, chancellor or chief executive officer shall not constitute such a policy advisory committee. The custodian of the records of any public governmental body shall maintain a list of the policy advisory committees described in this subdivision; [and]

(f) Any quasi-public governmental body. The term "quasi-public governmental body" means any person, corporation or partnership organized or authorized to do business in this state pursuant to the provisions of chapter 352, 353, or 355, RSMo, or unincorporated association which either:

a. Has as its primary purpose to enter into contracts with public governmental bodies, or to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies; or

b. Performs a public function as evidenced by a statutorily based capacity to confer or otherwise advance, through approval, recommendation or other means, the allocation or issuance of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the contracting of leaseback agreements on structures whose annualized payments commit public tax revenues; or any association that directly accepts the appropriation of money from a public

governmental body, but only to the extent that a meeting, record, or vote relates to such appropriation; **and**

(g) Any bi-state development agency established pursuant to section 70.370, RSMo;

(5) "Public meeting", any meeting of a public governmental body subject to sections 610.010 to 610.030 at which any public business is discussed, decided, or public policy formulated, whether corporeal or by means of communication equipment. The term "public meeting" shall not include an informal gathering of members of a public governmental body for ministerial or social purposes when there is no intent to avoid the purposes of this chapter, but the term shall include a public vote of all or a majority of the members of a public governmental body, by electronic communication or any other means, conducted in lieu of holding a public meeting with the members of the public governmental body gathered at one location in order to conduct public business;

(6) "Public record", any record, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared and presented to the public governmental body by a consultant or other professional service paid for in whole or in part by public funds; provided, however, that personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years. The term "public record" shall not include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body, unless such records are retained by the public governmental body or presented at a public meeting;

(7) "Public vote", any vote cast at any public meeting of any public governmental body.

610.015. Except as provided in section 610.021, rules authorized pursuant to article III of the Missouri Constitution and as otherwise provided by law, all votes shall be recorded, and [if a roll call is taken, as to attribute] **attributed as to** each "yea" and "nay" vote, or abstinence if not voting, to the name of the individual member of the public governmental body. Any votes taken during a closed **or open** meeting shall be taken by roll call, **except votes on procedural or ministerial matters**. All public meetings shall be open to the public and public votes and public records shall be open to the public for inspection and duplication.

610.021. Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following:

(1) Legal actions, **imminent** causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or

its representatives and its attorneys. However, any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or with its authority, including any insurance company acting on behalf of a public governmental body as its insured, shall be made public upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of section 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. **Any vote taken on any question deemed closed pursuant to this subdivision shall be made public in accordance with other records as provided in this subdivision.** Legal work product shall be considered a closed record;

(2) Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any minutes, vote or public record approving a contract relating to the leasing, purchase or sale of real estate by a public governmental body shall be made public [within seventy-two hours after] **upon** execution of the lease, purchase or sale of the real estate. **Any vote taken on any question deemed closed pursuant to this subdivision shall be made public in accordance with other records as provided in this subdivision;**

(3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body must be made available with a record of how each member voted to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. **Any vote taken on any question deemed closed pursuant to this subdivision shall be made public in accordance with other records as provided in this subdivision.** As used in this subdivision, the term "personal information" means information relating to the performance or merit of individual employees;

(4) The state militia or national guard or any part thereof;

(5) Nonjudicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment;

(6) Scholastic probation, expulsion, or graduation of identifiable individuals, including

records of individual test or examination scores; however, personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;

(7) Testing and examination materials, before the test or examination is given or, if it is to be given again, before so given again;

(8) Welfare cases of identifiable individuals;

(9) Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups;

(10) Software codes for electronic data processing and documentation thereof;

(11) Specifications for competitive bidding, until either the specifications are officially approved by the public governmental body or the specifications are published for bid;

(12) Sealed bids and related documents, until the bids are opened; and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected;

(13) Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such;

(14) Records which are protected from disclosure by law;

(15) Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest;

(16) Records relating to municipal hot lines established for the reporting of abuse and wrongdoing;

(17) Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product[; and], **but this exception shall not include any completed audit report for any public governmental body or college or university system or individual institution which is supported in whole or in part with state funds, including audited financial statements, and any written management letter issued by the auditor in conjunction with the audit;**

(18) In preparation for and implementation of electric restructuring, a municipal electric utility may close that portion of its financial records and business plans which contains information regarding the name of the suppliers of services to said utility and the cost of such services, and the records and business plans concerning the municipal electric utility's future marketing and service expansion areas. However, this exception shall not be construed to limit access to other records of a municipal electric utility, including but not limited to the names and addresses of its business and residential customers, its financial reports, including but not limited to its budget, annual reports

and other financial statements prepared in the course of business, and other records maintained in the course of doing business as a municipal electric utility. This exception shall become null and void if [the state of Missouri fails to implement by December 31, 2001, electric restructuring through the adoption of statutes permitting the same in this state.] **the Missouri general assembly fails to enact, on or before December 31, 2003, legislation authorizing electric utility restructuring.**

610.022. 1. Except as set forth in subsection 2 of this section, no meeting or vote may be closed without an affirmative public vote of the majority of a quorum of the public governmental body. The vote of each member of the public governmental body on the question of closing a public meeting or vote and the specific reason for closing that public meeting or vote by reference to a specific section of this chapter shall be announced publicly at an open meeting of the governmental body and entered into the minutes.

2. A public governmental body proposing to hold a closed meeting or vote shall give notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed pursuant to the provisions of section 610.021. Such notice shall comply with the procedures set forth in section 610.020 for notice of a public meeting.

3. Any meeting or vote closed pursuant to section 610.021 shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. Public governmental bodies shall not discuss any business in a closed meeting, record or vote which does not directly relate to the specific reason announced to justify the closed meeting or vote. Public governmental bodies holding a closed meeting must close only an existing portion of the meeting facility necessary to house the members of the public governmental body in the closed session, allowing members of the public to remain to attend any subsequent open session held by the public governmental body following the closed session.

4. Nothing in sections 610.010 to 610.028 shall be construed as to require a public governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.

5. Public records shall be presumed to be open unless otherwise exempt pursuant to the provisions of this chapter.

6. Any member of a public governmental body who believes that the body is wrongfully closing a meeting or vote shall enter his or her objection to the issue into the minutes of the public governmental body. The objection of the member as entered into the minutes shall be an absolute defense to any claim under section 610.027.

610.026. 1. Except as otherwise provided by law, each public governmental body shall provide access to and, upon request, furnish copies of public records subject to the following:

(1) Fees for copying public records shall not exceed the [actual cost of document search and duplication] **amounts specified in section 28.160, RSMo.** [Upon request, the governmental body shall certify in writing that the actual cost of document search and duplication is fair,

reasonable and does not exceed the actual cost incurred by the public governmental body.] Documents may be furnished without charge or at a reduced charge when the public governmental body determines that waiver or reduction of the fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the public governmental body and is not primarily in the commercial interest of the requester;

(2) Fees for providing access to public records maintained on computer facilities, recording tapes or discs, videotapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, shall include only the cost of copies, staff time required for making copies and programming, if necessary, and the disk or tape used for the duplication.

2. Payment of such copying fees may be requested prior to the making of copies.

3. Except as otherwise provided by law, each public governmental body of the state shall remit all moneys received by or for it from fees charged pursuant to this section to the director of revenue for deposit to the general revenue fund of the state.

4. Except as otherwise provided by law, each public governmental body of a political subdivision of the state shall remit all moneys received by it or for it from fees charged pursuant to sections 610.010 to 610.028 to the appropriate fiscal officer of such political subdivision for deposit to the governmental body's accounts.

5. The term "tax, license or fees" as used in section 22 of article X of the Constitution of the state of Missouri does not include copying charges and related fees that do not exceed the level necessary to pay or to continue to pay the costs for providing a service, program, or activity which was in existence on November 4, 1980, or which was approved by a vote of the people subsequent to November 4, 1980.

610.027. 1. The remedies provided by this section against public governmental bodies shall be in addition to those provided by any other provision of law. Any aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the public governmental body has its principal place of business.

2. Once a party seeking judicial enforcement of sections 610.010 to 610.026 demonstrates to the court that the body in question is subject to the requirements of sections 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall be on the body and its members to demonstrate compliance with the requirements of sections 610.010 to 610.026.

3. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has [purposely] **knowingly** violated sections 610.010 to 610.027, the public governmental body or the member shall be subject to a civil [fine in] **penalty. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public**

governmental body or member of a public governmental body has previously violated sections 610.010 to 610.027. The amount of [not more than five hundred] **the penalty may range from zero dollars [and] to twenty-five hundred dollars, but in no event shall such civil penalty be more than five percent of the total annual budget of the public body. If the court finds that there was a knowing violation of sections 610.010 to 610.027,** the court [may] **shall** order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing a violation of sections 610.010 to 610.026.

4. Upon a finding by a preponderance of the evidence that a public governmental body has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs the public interest in sustaining the validity of the action taken in the closed meeting, record or vote. Suit for enforcement must be brought within one year from which the violation is ascertainable and in no event shall it be brought later than two years after the violation. This subsection shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a public governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

5. A public governmental body which is in doubt about the legality of closing a particular meeting, record or vote may bring suit at the expense of that public governmental body in the circuit court of the county of the public governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

6. When a person submits a written complaint to the attorney general concerning the compliance of a public governmental body or a member of a public governmental body with sections 610.010 to 610.026 and the attorney general advises the public body of the complaint or otherwise attempts to resolve a dispute presented by such complaint, the public governmental body or member of that public governmental body shall cooperate with the attorney general for the purpose of resolving the dispute. When, in response to a complaint or on the attorney general's own initiative, the attorney general seeks to determine compliance of a public governmental body or member of a public governmental body with sections 610.010 to 610.026, the attorney general shall be entitled to obtain copies of open and closed records of any public governmental body, except records of privileged communications. Records identified as closed by the public governmental body that the attorney general obtains pursuant to this subsection shall remain closed, except that the attorney general may use those records in any action brought to enforce the provisions of sections 610.010 to 610.026, by presenting them in any court proceeding if the attorney general determines that the

records should not have been closed or that the records reflect an action or actions that should not have been conducted in a closed session.

610.100. 1. As used in sections 610.100 to 610.150, the following words and phrases shall mean:

(1) "Arrest", an actual restraint of the person of the defendant, or by his or her submission to the custody of the officer, under authority of a warrant or otherwise for a criminal violation which results in the issuance of a summons or the person being booked;

(2) "Arrest report", a record of a law enforcement agency of an arrest and of any detention or confinement incident thereto together with the charge therefor;

(3) "Inactive", an investigation in which no further action will be taken by a law enforcement agency or officer for any of the following reasons:

(a) A decision by the law enforcement agency not to pursue the case;

(b) Expiration of the time to file criminal charges pursuant to the applicable statute of limitations, or ten years after the commission of the offense; whichever date earliest occurs;

(c) Finality of the convictions of all persons convicted on the basis of the information contained in the investigative report, by exhaustion of or expiration of all rights of appeal of such persons;

(4) "Incident report", a record of a law enforcement agency consisting of the date, time, specific location, name of the victim and immediate facts and circumstances surrounding the initial report of a crime or incident, including any logs of reported crimes, accidents and complaints maintained by that agency;

(5) "Investigative report", a record, other than an arrest or incident report, prepared by personnel of a law enforcement agency, inquiring into a crime or suspected crime, either in response to an incident report or in response to evidence developed by law enforcement officers in the course of their duties.

2. Each law enforcement agency of this state, of any county, and of any municipality, shall maintain records of all incidents reported to the agency, investigations and arrests made by such law enforcement agency. All incident reports and arrest reports shall be open records. Notwithstanding any other provision of law other than the provisions of subsections 4, 5 and 6 of this section or section 320.083, RSMo, investigative reports of all law enforcement agencies are closed records until the investigation becomes inactive. If any person is arrested and not charged with an offense against the law within thirty days of the person's arrest, the arrest report shall thereafter be a closed record except that the disposition portion of the record may be accessed and except as provided in section 610.120.

3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any portion of a record or document of a law enforcement officer or agency, other than an arrest report, which would otherwise be open, contains information that is reasonably likely to pose a clear and present danger

to the safety of any victim, witness, undercover officer, or other person; or jeopardize a criminal investigation, including records which would disclose the identity of a source wishing to remain confidential or a suspect not in custody; or which would disclose techniques, procedures or guidelines for law enforcement investigations or prosecutions, that portion of the record shall be closed and shall be redacted from any record made available pursuant to this chapter.

4. Any person, attorney for a person, or insurer of a person involved in any incident or whose property is involved in an incident, may obtain any records closed pursuant to this section or section 610.150 for purposes of investigation of any civil claim or defense, as provided by this subsection. Any individual, his or her attorney or insurer, involved in an incident or whose property is involved in an incident, upon written request, may obtain a complete unaltered and unedited incident report concerning the incident, and may obtain access to other records closed by a law enforcement agency pursuant to this section. Within thirty days of such request, the agency shall provide the requested material or file a motion pursuant to this subsection with the circuit court having jurisdiction over the law enforcement agency stating that the safety of the victim, witness or other individual cannot be reasonably ensured, or that a criminal investigation is likely to be jeopardized. If, based on such motion, the court finds for the law enforcement agency, the court shall either order the record closed or order such portion of the record that should be closed to be redacted from any record made available pursuant to this subsection.

5. Any person may bring an action pursuant to this section in the circuit court having jurisdiction to authorize disclosure of the information contained in an investigative report of any law enforcement agency, which would otherwise be closed pursuant to this section. The court may order that all or part of the information contained in an investigative report be released to the person bringing the action. In making the determination as to whether information contained in an investigative report shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, to the law enforcement agency or any of its officers, or to any person identified in the investigative report in regard to the need for law enforcement agencies to effectively investigate and prosecute criminal activity. The investigative report in question may be examined by the court in camera. The court may find that the party seeking disclosure of the investigative report shall bear the reasonable and necessary costs and attorneys' fees of both parties, unless the court finds that the decision of the law enforcement agency not to open the investigative report was substantially unjustified under all relevant circumstances, and in that event, the court may assess such reasonable and necessary costs and attorneys' fees to the law enforcement agency.

6. Any person may apply pursuant to this subsection to the circuit court having jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest reports being unlawfully closed pursuant to this section. If the court finds by a preponderance of the evidence that the law enforcement officer or agency has [purposely] **knowingly** violated this section, the

officer or agency shall be subject to a civil penalty [in an amount not to exceed five hundred dollars, and]. **The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the law enforcement officer or agency has previously violated this section. The amount of the penalty may range from zero dollars to twenty-five hundred dollars, but in no event shall such civil penalty be more than five percent of the total annual budget of the law enforcement officer or agency. If the court finds that there was a knowing violation of this section,** the court shall order payment by such officer or agency of all costs and attorneys' fees, as provided by section 610.027.

7. The victim of an offense as provided in chapter 566, RSMo, may request that his or her identity be kept confidential until a charge relating to such incident is filed.

610.105. If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated [except that the disposition portion of the record may be accessed and] **except as provided in section 610.120 and except that the court's judgment or order or the final action taken by the prosecutor in such matters may be accessed.** If the accused is found not guilty due to mental disease or defect pursuant to section 552.030, RSMo, official records pertaining to the case shall thereafter be closed records upon such findings, except that the disposition may be accessed only by law enforcement agencies, child-care agencies, facilities as defined in section 198.006, RSMo, and in-home services provider agencies as defined in section 660.250, RSMo, in the manner established by section 610.120.

610.200. [1.] Except as provided in subsection 2 of this section all law enforcement agencies that maintain a daily log or record that lists suspected crimes, accidents, or complaints, shall make available the following information for inspection and copying by the public:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency;
- (2) The time and nature of the agency's response to all complaints or requests for assistance; and
- (3) If the incident involves an alleged crime or infraction:
 - (a) The time, date, and location of occurrence;
 - (b) The name and age of any victim, unless the victim is a victim of a crime under chapter 566, RSMo;
 - (c) The factual circumstances surrounding the incident; and
 - (d) A general description of any injuries, property or weapons involved.

[2. Any law enforcement agency with custody of an accident report or incident report, as defined in section 610.100, shall not release for sixty days after the date of the accident or incident

the report containing the factual circumstances or general description of any injuries as provided in paragraphs (c) and (d) of subdivision (3) of subsection 1 of this section to a person that is not an interested party. For the purposes of this subsection, an "interested party" is any law enforcement agency, any person who was involved in the accident or incident, the street department of the jurisdiction involved, the owner of any vehicle involved in the accident or incident, the insurance company, physician or family member of any person involved in the accident or incident or any attorney or any member of the news media.]

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